

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.08.2020

PRONOUNCED ON : 20.08.2020

CORAM

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Civil Miscellaneous Appeal No.1181 of 2016

1.M.Ananthi

2.Minor M.Murugan,
Minor rep by its Mother

3.K.Santha
(All are now residing at Vinnamangalam Village,
Arni Taluk, Tiruvannamalai District).

4.P.Krishnan (deceased)Appellants/Claimant

1.P.Venkatesan

2.United India Insurance Co. Ltd.,
235, Gandhi Road, Arni,
Tiruvannamalai District.Respondents/Respondents

Prayer:- This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MCOP No.181 of 2012 dated 10.09.2015 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Arni, Tiruvannamalai District.

For Appellants : Mr.P.Rajavelu
For R.1 : Unclaimed
For R.2 : Ms.R.Rathna Thara

JUDGMENT

This claimants' appeal is directed against the award of the Mortor Accident Claims Tribunal, Arni, Tiruvannamalai District against the quantum and liability.

2.The points for consideration in this appeal are:-

"a) Whether the claimants are entitled for additional compensation under future prospects, for the death of a Mason died at the age of 42 years in the road accident ?;

b) Whether, the Insurance Company is liable to pay the third party claimants when the Driver of the insured offending vehicle does not have a valid driving licence ? and

c) Whether pay and recovery principle to be applied when the Drivers of the offending vehicle and the affected vehicle do not possess licence to drive the motor vehicles ?"

3.On 09/10/2012, at about 9.00 am, Munusamy s/o Krishnan who was proceeding in his Bajaj Two wheeler bearing registration No.TN 25-Z-9712 and the first respondent Venkatesan who was coming from the opposite direction in his Hero Honda Two wheeler bearing registration No.TN 25-U-4243 dashed against each other at the Vandavasi to Arni Road, near Sakthi Nagar. Munusamy was thrown away from his vehicle. He was severely injured. He died on his way to Hospital at Chennai for better treatment, after providing first aid at Vellore, Government Hospital.

4.A criminal case against Venkatesan was registered by the Arni Taluk Police in Crime No.589/2012 under sections 279 and 337 IPC altered into section 304 A IPC for causing damage to the vehicle and death of Munusamy by his act of rash and negligence.

5.Claim petition filed by the wife, son and mother of the deceased seeking compensation from the offending vehicle owner - Venkatesan and its Insurer - United India Insurance Co. Ltd. A sum of Rs.20 lakhs was claimed as per the break up given under:-

Loss of earning:	Rs 12,00,000/-
Transport to hospital:	Rs 5,000/-
Loss of love and affection	Rs 20,000/-
Shock and mental agony	Rs 20,000/-
Loss of consortium	Rs 30,000/-
Damages to cloth and articles	Rs 20,000/-
Funeral expenses	Rs 5,000/-
Total	Rs 20,00,000/-

6.The Tribunal awarded compensation of Rs.9,40,000/-. It exonerated the second respondent Insurance Company on the ground

that the insured has violated the terms and conditions of the Insurance policy that, the Driver of the offending vehicle who is the owner of the vehicle did not possess driving licence and it saves the second respondent Insurance Company from indemnifying the insured. The liability was fastened on the vehicle owner, the first respondent herein.

7.The appellants who are the claimants before the Tribunal aggrieved and had preferred this appeal on the ground that the income of the deceased should have been fixed at Rs.12,000/- pm and not Rs.6,000/- per month. The Tribunal ought to have considered the future prospects and given 30% additional compensation. The Tribunal instead of exonerating the second respondent Insurance Company which has received premium, for violation of insurance policy condition, it ought to have ordered the Insurance Company to pay and recover from the insured / the first respondent herein. In a third party claim, if they are to be denied, the benefit of the welfare legislation, which is intended to assure them that they will get compensation from the Insurance Company with which the vehicle stands insured in case of fault on the part of the vehicle owner or any person allowed to drive the vehicle, the very purpose of the scheme will be defeated.

8.To buttress his submission, the counsel for the appellants/claimants would submit that the judgments of the Hon'ble Apex Court rendered in National Insurance Co Ltd -vs- Swaran Singh (AIR 2004 SC 1531); Kasthuri -vs- Gopu (2014) 6 MLJ 532 and in National Insurance Co.Ltd., Vs. Pranay Sethi and others (2017 (2) TN MAC 609 (SC)).

9.The learned counsel for the second respondent Insurance Company would submit that, it is established through evidence that neither the Driver of the offending vehicle nor the victim had proper driving licenses. The tortfeasor is the owner of that vehicle. Knowing fully well that he did not have licence and he should not drive motor vehicle without driving licence, he has driven the vehicle thereby committed breach of policy condition. The insured guilty of negligence and failure to fulfil the condition of the policy regarding the use of the vehicle is obvious by driving the vehicle without licence.

10.The insured/owner of the vehicle, the first respondent remained absent.

11.The general rule laid down by the Hon'ble Supreme Court and followed in catena of judgements is that, Driver not possessing a valid driving licence was not a ground for the Insurer to disown the liability to pay compensation to the third party claimants, since, section 149 of the Motor Vehicles Act, 1988 mandates the Insurer to satisfy judgement/awards passed against the insured person in respect of third party risks.

12.In National Insurance Co Ltd -vs- Swaran Singh (cited supra), three judges bench of the Hon'ble Supreme court, laid down guidelines in case of claims resisted on the ground of breach of policy condition as below:-

"The summary of our findings to the various issues as raised in these petitions are as follows :-

(i) Chapter XI of the Motor Vehicles Act, 1988 providing compulsory insurance of vehicles against third party risks is a social welfare legislation to extend relief by compensation to victims of accidents caused by use of motor vehicles. The provisions of compulsory insurance coverage of all vehicles are with this paramount object and the provisions of the Act have to be so interpreted as to effectuate the said object.

(ii) Insurer is entitled to raise a defence in a claim petition filed under Section 163A or Section 166 of the Motor Vehicles Act, 1988 inter alia in terms of Section 149(2) (a) (ii) of the said Act.

(iii) The breach of policy condition e.g., disqualification of driver on invalid driving licence of the driver, as contained in Sub-section (2) (a) (ii) of Section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time.

(iv) The Insurance Companies are, however, with a view to avoid their liability must not only establish the available defence(s) raised in the said proceedings but must also establish 'breach' on the part of the owner of the vehicle; the burden of proof wherefor would be on them.

(v) The Court cannot lay down any criteria as to how said burden would be discharged, inasmuch as the same would depend upon the facts and circumstances of the case.

(vi) Even where the insurer is able to prove breach on the part of the insured concerning the policy condition regarding holding of a valid licence by the driver or his qualification to drive during the relevant period, the insurer would not be allowed to avoid its liability towards insured unless the said breach or breaches on the condition of driving licence is/are so fundamental as are found to have contributed to the cause of the accident. The Tribunals in interpreting the policy conditions would apply "the rule of main purpose" and the concept of "fundamental breach" to allow defences available to the insured under Section 149(2) of the Act."

13. In *S. Iyappan -vs- United India Insurance Co. Ltd.*, (2013 (7) SCC 62), the Hon'ble Supreme Court has observed that:-

"18. Reading the provisions of Sections 146 and 147 of the Motor Vehicles Act, it is evidently clear that in certain circumstances the insurer's right is safeguarded but in any event the insurer has to pay compensation when a valid certificate of insurance is issued notwithstanding the fact that the insurer may proceed against the insured for recovery of the amount. Under Section 149 of the Motor Vehicles Act, the insurer can defend the action inter alia on the grounds, namely, (i) the vehicle was not driven by a named person, (ii) it was being driven by a person who was not having a duly granted licence, and (iii) person driving the vehicle was disqualified to hold and obtain a driving licence. Hence, in our considered opinion, the insurer cannot disown its liability on the ground that although the driver was holding a licence to drive a light motor vehicle but before driving light motor vehicle used as commercial vehicle, no endorsement to drive commercial vehicle was obtained in the driving licence. In any case, it is the statutory right of a third party to recover the amount of

compensation so awarded from the insurer. It is for the insurer to proceed against the insured for recovery of the amount in the event there has been violation of any condition of the insurance policy.

14. In the instant case, Venkatesan, the first respondent is the owner of the offending vehicle bearing registration No. TN-25-U 4243. He is the tortfeasor. Criminal case was registered against him for causing death by rash and negligence driving. He was examined as DW-1. He admits in his evidence that, on the date of accident, he did not have licence to drive the motor cycle and he knew that he should not drive the motor vehicle without licence. By driving the vehicle without possessing a valid driving licence, is clear case of breach of insurance policy condition. In Swaran Singh case (cited supra), the Hon'ble Supreme Court has observed that, even where the Insurer is able to prove breach on the part of the Insured concerning the policy condition regarding holding of a valid licence by the Driver or his qualification to drive during the relevant period, the Insurer would not be allowed to avoid the liability towards insured unless the said breach or breaches on the condition of driving licence is / are so fundamental as are found to have contributed to the cause of the accident.

15. As pointed out earlier, at the risk of repetition, in the instant case, the Insurer is the tortfeasor. The F.I.R., shows the accident occurred due to his negligence and he did not have a licence to drive the motor cycle. If the tortfeasor is somebody else other than the owner, for violation of insurance policy, pay and recovery principle, be applied. If the tortfeasor is the owner of the vehicle, then the negligence leading to the accident and the breach of policy condition allow the Insurance Company to take defence available under section 149(2) of the Motor Vehicles Act. The Insurance Company need not be forced to pay to the victim and recover from the insured.

16. Therefore, this Court holds that, the breach of policy condition in the facts and circumstances of the case, is fundamental one. Hence, the second respondent Insurance Company is entitled to take the defence of breach of policy condition. The trial Court order exonerating the Insurance Company is upheld.

17. Quantum of compensation:-

The victim was the Mason aged 42 years at the time of date of accident viz., on 10/12/2002. In the absence of income proof, the Tribunal has taken notional income of Rs.6,000/- after deducting 1/4th for his personal expenditure and taking the age of the first claimant (wife), the Tribunal has fixed multiplier 16. However, no additional compensation given for future prospects. In Pranays Sethi case (cited supra), while applying the multiplier, the age of the victim has to be taken note and not the age of the dependants. Further, it has held that the daily wagers and fixed salary victims are entitled to claim compensation for the loss of future prospects. Therefore, the compensation awarded by the Tribunal under the head loss of dependency is modified as below, following the dictum laid in Pranays sethi case (cited supra):

"Notional income is fixed at Rs.6,000/- pm. In the instant case the deceased was self-employed or on a fixed salary and was 42 years at the time of accident. Hence an addition of 25% of the established income (Rs.6,000/-) is awarded. The age of the victim is taken as 42 years and multiplier 14 is applied and for future prospects 25% of his notational income is added. Then, the claimants will be entitled for a sum of (Rs.7,500 x 12 x $\frac{3}{4}$ x 14) = Rs.9,45,000/-. Instead of Rs.8,64,000/-. Thus, the claimants are entitled to an additional sum of Rs.81,000/- with interest at the rate of 7.5%. This court holds that, since the Insured himself is the tortfeaser, for violation of policy conditions, pay and recovery will not apply. Hence the tribunal order exhonoring the insurance company from liability is upheld."

18.In the result, on applying the principle laid in Pranays Sethi case (cited supra), the award passed by the Tribunal is enhanced as stated below and the liability is fixed on the first respondent:-

Under the Heads	Amount
Loss of Income	Rs.9,45,000/-
Funeral expenses	Rs.15,000/-
Transport	Rs.5,000/-
Loss of consortium (first claimant)	Rs.40,000/-
Loss of love and affection (2 nd and 3 rd claimants)	Rs. 30,000/-
Loss of articles	Rs.1,000/-
Total	Rs.10,36,000/-

The compensation is enhanced from Rs.9,40,000/- to Rs.10,36,000/-. The vehicle owner/first respondent is directed to deposit the said award amount in the MCOP account within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit being made, the said award amount shall be apportioned by the claimants as stated below:-

First Claimant (wife): Rs.5,00,000/-

Second claimant (son): Rs.3,00,000/-

Third claimant (mother): Rs 2,36,000/-

19. Accordingly, Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

jbm

To

The Motor Accident Claims Tribunal
(Subordinate Judge),
Arni, Tiruvannamalai District.

Copy To

The Section Officer,

VR Section, High Court, Madras.

+1cc to Mr.P.Rajavelu, Advocate SR.No.27237

C.M.A.No.1181 of 2016

PP (CO)
GMY (25/09/2020)